of the risk-based capital requirement under this paragraph (b) and also appears as an asset on the savings association's balance sheet, the savings association must risk-weight the asset only under this paragraph (b), except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In that case, the savings association must separately risk-weight the on-balance sheet servicing asset and the related recourse obligations and direct credit substitutes under this section, and incorporate these amounts into the risk-based capital calculation.

(8) *Obligations of subsidiaries.* If a Federal savings association retains a recourse obligation or assumes a direct credit substitute on the obligation of a subsidiary that is not an includable subsidiary, and the recourse obligation or direct credit substitute is an equity or debt investment in that subsidiary under GAAP, the face amount of the recourse obligation or direct credit substitute is deducted for capital under §§167.5(a)(2) and 167.9(c). All other recourse obligations and direct credit substitutes retained or assumed by a Federal savings association on the obligations of an entity in which the savings association has an equity investment are risk-weighted in accordance with this paragraph (b).

§ 167.8 Leverage ratio.

(a) The minimum leverage capital requirement for a Federal savings association assigned a composite rating of 1, as defined in §116.3 of this chapter, shall consist of a ratio of core capital to adjusted total assets of 3 percent. These generally are strong associations that are not anticipating or experiencing significant growth and have well-diversified risks, including no undue interest rate risk exposure, excellent asset quality, high liquidity, and good earnings.

(b) For all Federal savings associations not meeting the conditions set forth in paragraph (a) of this section, the minimum leverage capital requirement shall consist of a ratio of core capital to adjusted total assets of 4 percent. Higher capital ratios may be required if warranted by the particular circumstances or risk profiles of an individual Federal savings association. In all cases, Federal savings associations should hold capital commensurate with the level and nature of all risks, including the volume and severity of problem loans, to which they are exposed.

§ 167.9 Tangible capital requirement.

(a) Federal savings associations shall have and maintain tangible capital in an amount equal to at least 1.5% of adjusted total assets.

(b) The following elements, less the amount of any deductions pursuant to paragraph (c) of this section, comprise a Federal savings association's tangible capital:

(1) Common stockholders' equity (including retained earnings);

(2) Noncumulative perpetual preferred stock and related earnings;

(3) Nonwithdrawable accounts and pledged deposits that would qualify as core capital under §167.5 of this part; and

(4) Minority interests in the equity accounts of fully consolidated subsidiaries.

(c) *Deductions from tangible capital.* In calculating tangible capital, a Federal savings association must deduct from assets, and, thus, from capital:

(1) Intangible assets (as defined in §167.1) except for mortgage servicing assets to the extent they are includable in tangible capital under §167.12, and credit enhancing interest-only strips and deferred tax assets not includable in tangible capital under §167.12.

(2) Investments, both equity and debt, in subsidiaries that are not includable subsidiaries (including those subsidiaries where the savings association has a minority ownership interest), except as provided in paragraphs (c)(3) and (c)(4) of this section.

(3) If a Federal savings association has any investments (both debt and equity) in one or more subsidiary(ies) engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, tangible capital in accordance with this paragraph (c)(3). The savings association must

first deduct from assets and, thus, capital the amount by which any investments in such a subsidiary(ies) exceed the amount of such investments held by the savings association. Next, the savings association must deduct from assets and, thus, tangible capital the savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

(4) If a savings association holds a subsidiary (either directly or through a subsidiary) that is itself a domestic depository institution the OCC may, in its sole discretion upon determining that the amount of tangible capital that would be required would be higher if the assets and liabilities of such subsidiary were consolidated with those of the parent savings association than the amount that would be required if the parent savings association's investment were deducted pursuant to paragraphs (c)(2) and (c)(3) of this section, consolidate the assets and liabilities of that subsidiary with those of the parent savings association in calculating the capital adequacy of the parent savings association, regardless of whether the subsidiary would otherwise be an includable subsidiary as defined in §167.1 of this part.

§ 167.10 Consequences of failure to meet capital requirements.

(a) *Capital plans.* (1) [Reserved]

(2) The OCC shall require any Federal savings association not in compliance with capital standards to submit a capital plan that:

(i) Addresses the savings association's need for increased capital;

(ii) Describes the manner in which the savings association will increase capital so as to achieve compliance with capital standards;

(iii) Specifies types and levels of activities in which the savings association will engage;

(iv) Requires any increase in assets to be accompanied by increase in tangible capital not less in percentage amount than the leverage limit then applicable;

(v) Requires any increase in assets to be accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable; and

(vi) Is acceptable to the Comptroller.

(3) To be acceptable to the Comptroller under this section, a plan must, in addition to satisfying all of the requirements set forth in paragraphs (a)(2)(i) through (a)(2)(v) of this section, contain a certification that while the plan is under review by the OCC, the savings association will not, without the prior written approval of the OCC:

(i) Grow beyond net interest credited;

(ii) Make any capital distributions; or

(iii) Act inconsistently with any other limitations on activities established by statute, regulation or by the OCC in supervisory guidance for Federal savings associations not meeting capital standards.

(4) If the plan submitted to the Comptroller under paragraph (a)(2) of this section is not approved by the Comptroller, the savings association shall immediately and without any further action, be subject to the following restrictions:

(i) It may not increase its assets beyond the amount held on the day it receives written notice of the Comptroller's disapproval of the plan; and

(ii) It must comply with any other restrictions or limitations set forth in the written notice of the Comptroller's disapproval of the plan.

(b) The Comptroller shall:

(1) Prohibit any asset growth by any Federal savings association not in compliance with capital standards, *except* as provided in paragraph (d) of this section; and

(2) Require any Federal savings association not in compliance with capital standards to comply with a capital directive issued by the Comptroller which may include the restrictions contained in paragraph (e) of this section and any other restrictions the Comptroller determines appropriate.

(c) A Federal savings association that wishes to obtain an exemption from the sanctions provided in paragraph (b)(2) of this section must file a request for exemption with the OCC. Such request must include a capital plan that satisfies the requirements of paragraph (a)(2) of this section.